IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN JOSEPH EDWARDS, **Plaintiff,** **v.** **A. WESLEY WYATT,** **Defendant.**		**CIVIL ACTION NO. 01-1333**

MEMORANDUM AND ORDER

Tucker, J. **October 10, 2006**

This cause of action for breach of contract arises out of an ongoing dispute between Plaintiff, John Joseph Edwards, and Defendant, A. Wesley Wyatt, concerning control over Pilot Air Freight Corporation ("Pilot"), an air freight forwarding company. The parties entered into an oral contract which provided that neither party would, without the participation of the other party, enter a settlement agreement with Richard G. Phillips, CEO of Pilot, to settle Edwards's bankruptcy estate. Plaintiff, former president of Pilot, claims that Defendant breached that agreement by settling the bankruptcy estate with Phillips without Plaintiff's involvement. Defendant does not dispute the existence or terms of the contract but contends, rather, that Plaintiff repudiated through statements made in letters sent to Defendant by Plaintiff's counsel, Stephen L. Braga. This Court finds that, under Pennsylvania law, Edwards did not repudiate the oral contract by Braga's letters or by subsequent actions and Wyatt breached the parties agreement entitling Edwards to damages.

Plaintiff, Edwards, became acquainted with Defendant, Wyatt, after it became apparent that Pilot required refinancing and additional outside investment in order to remain financially stable. In 1994, Richard Phillips, then Pilot's attorney, secured outside investment from Wyatt and structured a refinancing of the company's banking arrangements. Eventually, Phillips and Wyatt became members of Pilot's Board of Directors and acquired rights to secure outstanding shares of the company. In addition, Phillips became Pilot's chief executive officer ("CEO") while Edwards, retaining his position as president and director of Pilot, entered into a three-year employment agreement with the company. The relationship between the three men, however, soon disintegrated in the face of disagreements and struggle for control over the company, eventually leading to Edward's termination in 1995.

Edwards, thereafter, petitioned for Chapter 11 bankruptcy. During the course of the bankruptcy sale proceeding, Wyatt and Phillips submitted competing bids for the purchase of Edwards's Pilot stock and other assets. On April 30, 1998, Wyatt and Edwards agreed that neither party would enter into any agreement with Phillips to settle the bankruptcy sale without the participation of the other (the "Handshake Agreement"). On October 30, 1998, the day of the bankruptcy sale, Wyatt and Phillips informed the bankruptcy court that they entered into a separate settlement agreement whereby Wyatt and Phillips joined together to offer a joint bid of $5,200,000 plus settlement of all claims among Wyatt, Phillips, Pilot, and the bankruptcy estate of Edwards. Edwards was not included in settlement discussions or the final agreement. Edwards objected to the joint bid as an illegal collusive effort to control the sale price for his assets in the bankruptcy court. On December 15, 1998, the Bankruptcy Court rejected the objection and permitted the sale of Edwards's assets controlled by the trustee. Edwards received approximately $3,000,000 from the sale of these assets.

On December 29, 1999, Edwards filed a complaint against Wyatt, asserting claims of breach of contract, promissory estoppel, and fraudulent misrepresentation in the District Court for the District of Columbia. On January 18, 2001, the D.C. District Court, finding no personal jurisdiction over the Defendant, ordered that the case be transferred to the Eastern District of Pennsylvania. In May 2002, the parties appeared for a bench trial before Judge James M. Kelly. Judge Kelly found in favor of Defendant Wyatt. Edwards v. Wyatt, No. 01-1331, 2002 U.S. Dist. LEXIS 15026, at * 14 (E.D. Pa. August 5, 2002). Plaintiff appealed and the Third Circuit reversed and remanded Judge Kelly's ruling. Edwards v. Wyatt, 335 F.3d 261 (2003). A second trial took place in February 2004, ending in a second verdict for Defendant Wyatt. Edwards v. Wyatt, No. 01-1331, 2004 U.S. Dist. LEXIS 13269, at *39 (E.D. Pa. July 14, 2004). Plaintiff again appealed and the Court of Appeals remanded the case for a second time. Edwards v. Wyatt, No. 04-3325, 2005 U.S. App. LEXIS 10688 (3d Cir. June 3, 2005).

A bench trial was held before this Court on September 18 and 19, 2006. Jurisdiction is based on diversity of citizenship. 28 U.S.C. § 1332. What follows constitutes this Court's findings of fact and conclusions of law as well an assessment of damages. Fed. R. Civ. Pro. 52(a).[1]

I. FINDINGS OF FACT

A. THE FOLLOWING UNDISPUTED FACTS WERE SET FORTH IN A PRE-TRIAL STIPULATION:

1. Plaintiff Edwards was a citizen of the State of South Carolina when the Complaint in this case was filed and is presently a citizen of the State of New York.

2. At all times relevant herein, Defendant Wyatt has been a citizen of the Commonwealth of Pennsylvania.

3. The amount in controversy between Edwards and Wyatt in this case is alleged to exceed $75,000.

[1]Federal Rule of Civil Procedure 52(a) states in relevant part: "In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon . . ."

4. On August 20, 1996, Edwards commenced a bankruptcy proceeding under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of Pennsylvania. In re: John Joseph Edwards, Bankruptcy No. 96-17868 (DWS).

5. On February 11, 1997, Edwards's Chapter 11 was converted to a Chapter 7 bankruptcy proceeding.

6. In September of 1997, Edwards obtained counsel – Stephen L. Braga – to represent his interests in the pending bankruptcy proceeding.

7. In the fall of 1997, Wyatt owned forty-five percent of the issued and outstanding stock of Pilot, Edwards's Chapter 7 Trustee controlled his thirty-three and one-third percent of Pilot's stock and the balance was owned or controlled by Phillips, who also served as Pilot's President and Chief Executive Officer.

8. On February 18, 1998, Edwards and Wyatt executed a written settlement agreement ("Settlement Agreement").

9. The Settlement Agreement contemplated, inter alia, a consulting agreement between Edwards and one of Wyatt's companies ("Consulting Agreement").

10. Pursuant to Paragraph 5 of the Settlement Agreement, Wyatt loaned Edwards $500,000.

11. On March 12, 1998, the Trustee filed her Motion of the Chapter 7 Trustee to Sell Assets ("Sale Motion").

12. On April 30, 1998, Wyatt and Edwards agreed that neither would enter into any agreement with Phillips to settle the bankruptcy sale proceeding without the participation of the other party ("Handshake Agreement").

13. On or about May 7, 1998, Wyatt tendered a bid for $3.6 million.

14. On July 29, 1998, a hearing was held in the Bankruptcy Court on the Trustee's Sale Motion, and that hearing resulted in a continuance of the Sale Motion until October 30, 1998.

B. THE FOLLOWING FACTS ARE BASED ON EVIDENCE RECEIVED AT THE BENCH TRIAL:

1. The assets of Edwards's bankruptcy estate consisted of his one-third stock interest in Pilot, a one-third interest in a real estate partnership ("the Edwards Partnership") that owned land upon which Pilot's businesses were situated, and certain claims Edwards had against third parties including Wyatt, Pilot and Phillips (collectively, "Edwards's Assets").

2. In 1997, Edwards's Chapter 7 Bankruptcy Trustee controlled his thirty-three and one-third percent of Pilot's stock, and the balance of Pilot's stock was owned or controlled by Phillips, who also served as Pilot's President and Chief Executive Officer.

3. The Trustee's valuation expert fixed a value of $2,745,000 for Edwards's Assets: $2,600,000 for the interest in the Pilot stock and $145,000 for the interest in the Edwards partnership.

4. In 1997, and thereafter, it became apparent to all parties that the value of Edwards Assets in bankruptcy far exceeded his liabilities. Accordingly, there would be a surplus bankruptcy estate where a substantial portion of any moneys raised through Chapter 7 proceedings with respect to those assets would be returned to Edwards after his creditors were paid**.**

5. The surplus nature of Edwards's bankruptcy estate gave him legal standing to appear in bankruptcy court and to take positions with respect to those proceedings completely independent of the appointed Bankruptcy Trustee.

6. In August of 1997, Edwards retained Braga to represent him in the bankruptcy proceeding and related matters.

7. After Braga entered his appearance in the bankruptcy proceeding, counsel for the Bankruptcy Trustee repeatedly sought Braga's advice and input on Edwards's positions with respect to various developments in the bankruptcy court.

8. In December 1997, one of Wyatt's lawyers, Jay Ochroch, and Edwards's lawyer, Braga, met to discuss a potential alignment between Edwards and Wyatt for their mutual benefit.

9. Also, in December 1997, Edwards and Wyatt met to discuss such a potential alignment, while Ochroch and Braga negotiated the parameters of such an

alignment between the parties.

10. During the months of December 1997, and January and February 1998, Wyatt and Edwards's representatives negotiated and drafted a written agreement specifying what they would try to accomplish by their collaborative efforts.

11. The February 18, 1998, Settlement Agreement between Edwards and Wyatt was executed in furtherance of their mutual ambition to sell either the assets or the stock of Pilot in the most profitable manner possible.

12. Plaintiff's trial exhibit 30, the Settlement Agreement, contains an integration clause that specifically and expressly provides that the Settlement Agreement "and the documents delivered pursuant hereto constitute the entire agreement and understanding between the Parties hereto as to the matters set forth herein and supercede and revoke all prior agreements and understandings, oral and written, between the parties hereto or otherwise with respect to the subject matter hereof."

13. The Settlement Agreement integration clause commits the parties to change the Settlement Agreement only in writing: "[n]o change, amendment, termination or attempted waiver of any of the provisions hereof shall be binding upon any party unless set forth in an instrument in writing signed by the parties.

14. Pursuant to their written agreement, Edwards and Wyatt arranged a meeting with the Bankruptcy Trustee and her counsel to try to gain her support for a Joint Motion to offer Pilot for sale publicly through an Initial Public Offering ("IPO").

15. Pursuant to the Consulting Agreement, Wyatt paid Edwards $6,731 per week for 26 weeks for a total payment of $175,000. Wyatt also paid $150,000 to Braga's law firm towards Edwards's legal bills and provided Edwards with a 1998 Acura automobile plus medical benefits.

16. Paragraph 6 of the Settlement contains its operative provision regarding the sale of Pilot's assets or stock. This provision of the Settlement Agreement is titled Sale of Stock. It required both parties to, inter alia, "use their best efforts to cause Pilot, its shareholders and directors to sell either all or substantially all of the assets of Pilot, the stock of Pilot or cause an initial public offering of the Pilot stock at a price mutually acceptable to the Parties."

17. The parties agree that the obligations of Settlement Agreement were fulfilled.

18. Wyatt and his counsel arranged for a number of professionals to attend the IPO meeting with the Trustee in order to discuss the potential public market valuation that they saw for Pilot. At the meeting, the brokerage firm of A.G. Edwards

showed its valuation for Pilot ranging from fourteen (14) to twenty-four (24) times earnings, and the Penn Merchant Group made a similar statement. At the meeting, Wyatt also spoke of similar numbers, which would have produced a valuation for Pilot between $60 and $120 million.

19. The Bankruptcy Trustee rejected the IPO proposal.

20. Nonetheless, Edwards and Wyatt filed a joint motion with the Bankruptcy court to have it approve the IPO proposal. The bankruptcy judge denied that motion.

21. A related motion to convert Edwards's bankruptcy case from a Chapter 7 proceeding back to a Chapter 11 proceeding, which would have given Edwards reorganizational control over his Pilot stock so that he and Wyatt could control Pilot, was also denied by the bankruptcy judge.

22. On March 12, 1998, the Bankruptcy Trustee filed a motion to sell Edwards's Assets – including his Pilot stock – to Phillips for $3.4 million.

23. On April 30, 1998, when it became apparent that Wyatt and Phillips were now involved in a bidding contest for Edwards's stock, to avoid being in a minority position, the parties entered into the Handshake Agreement. Wyatt and Edwards agreed that neither would enter into any agreement with Phillips to settle the bankruptcy sale proceeding without the participation of the other party.

24. The Handshake Agreement was wholly different from the February 18 written settlement agreement between the parties. The Handshake Agreement was an additional agreement made in light of the changed circumstances that the IPO motion and the Chapter 11 conversion motion, set forth in the Settlement Agreement, were not successful.

25. The Handshake Agreement did not prohibit either party from negotiating with Phillips, but rather only prohibited the actual consummation of a settlement,with Phillips, which did not include both Wyatt and Edwards.

26. The mutual consideration underlying the Handshake Agreement was that Wyatt did not want Edwards to reach a unilateral agreement with Phillips any more than Edwards wanted Wyatt to reach a unilateral agreement with Phillips. By standing together, they were each stronger.

27. Shortly after the Handshake Agreement, on May 7, 1998, Wyatt tendered, a bid of $3.6 million for Edwards's Assets.

28. On July 16, 1998, the bankruptcy court entered an order establishing certain

procedures for concluding the sale of Edwards's Assets.

29. Pursuant to the July 16 order, on July 20, 1998, Wyatt submitted a bid of $5 million in cash plus a claims bond of up to $3 million for Edwards's Assets.

30. On July 29, 1998, Phillips, proffered the sum of $5.1 million along with an offer to settle Pilot's claims against Edwards's bankruptcy estate for a mutual release. At the request of counsel for the Pilot franchisees, the hearing to confirm the sale was adjourned until October 30, 1998 at which time the Bankruptcy Court ordered a final auction to take place. The outstanding bids were ordered, by the Bankruptcy Court, to be irrevocable

31. On July 29, Wyatt authorized Ochroch to bid $10 million for Edwards's assets. (the "overbidding scenario").

32. Wyatt, however, was advised by his attorney Phillip Fisher not to discuss any overbidding scenario with Edwards due to its illegal nature. The "overbidding scenario" referenced is as follows: Wyatt would bid some amount of money far in excessof the amount of money Phillips could bid. Wyatt would then be the winning" bidder, pay the consideration into the bankruptcy court, and receive the Pilot stock. Because this proceeding was a "surplus" Chapter 7 proceeding, meaning that all of Edwards's creditors would be paid 100% of their claims, Edwards would receive any cash over and above the amount necessary to reimburse his creditors. After Wyatt paid the consideration and received the stock, the bankruptcy court would provide Edwards with the excess or "surplus" funds remaining after the creditors were paid. Under the "overbidding scenario," Edwards would then return these surplus funds to Wyatt, and Wyatt and Edwards would share the Pilot stock. Wyatt was advised by his attorneys that this "overbidding scenario" was illegal and a federal crime. As a result, Wyatt refused to participate in the overbidding scenario.[2]

33. On July 29, counsel for the Pilot franchisees requested a continuance (in which Ochroch joined) to further discussions with Phillips about submitting a joint bid. This request caused problems in the relationship between Edwards and Wyatt.

34. On July 30, 1998, Braga wrote to Ochroch and Silverstein expressing his concern about the relationship between Wyatt and Edwards, stating, "[t]he reality of the past twenty-four hours only heightens John's *belief*. . .that something

[2] The overbidding scenario was separate and apart from substance of the Handshake Agreement which, as already stated, was an as agreement that neither party would settle with Phillips without the input of the other. It was an agreement with general terms and could be fulfilled without adoption of the overbidding scenario. Therefore, the illegality of the overbidding scenario is irrelevant to this Court's findings regarding the Handshake Agreement.

fundamental has changed. . . .John *believes* that you have effectively severed the relationship. . .John *believes* that. . .[the] understanding has been breached. . . .*If* your plan is as John perceives it to be, then I would suggest you make negotiating an endgame result with John your first and immediate priority. Otherwise the game *may* be over as far as he is concerned. *If* it is not already" (emphasis added).

35. Braga's July 30, 1998 letter communicated Edwards's "beliefs." More specifically Braga's let er conveyed Edwards's subjective understanding that Wyatt had attempted to alter or breach the Handshake Agreement, warned Wyatt's counsel to speak with Wyatt about negotiating toward a result that prioritize Edwards's interests.

36. On July 31, 1998, receiving no response to the July 30, 1998 letter, Braga again wrote to Ochroch and Silverstein informing them that "*John views* [Wyatt's refusal to communicate and renew the consulting agreement] as [a] breach of his relationship with Wes" and that Braga has "been authorized to give [Wyatt] a one-week period within which to conclude a settlement agreement with John. *If* such an agreement, *then* I have been directed to provide the same opportunity to Mr. Phillips, which I will initiate on Friday[,] August 7, *if necessary*." (emphasis added).

37. The words "if" and "may" are words of equivocation.

38. The July 30 and July 31 letters were both designed to secure adequate assurances from Wyatt's counsel given Wyatt's negotiations with the franchisees and his decision not to continue the consulting agreement with Edwards.

39. In early August 1998, in response to Braga's letters of July 30 and July 31, Ochroch called Braga to schedule a meeting to discuss the issues raised by those letters.

40. On August 10, 1998, Wyatt and a number of his counsel met with Braga and Edwards's friend, Kevin Brinkworth, at Fox Rothschild to discuss the outstanding issues between Wyatt and Edwards ("Fox Rothschild meeting"). The parties disagree about the full import of that meeting, but it is at least clear that after that meeting: 1) Wyatt and Edwards were allowed to speak with each other again; 2) Edwards was allowed to continue his use of a leased car being provided to him by Wyatt; and 3) Edwards's health insurance coverage, through Wyatt's offices, was continued in effect.

41. Braga and Brinkworth attended the August 10 meeting in Philadelphia on behalf of Edwards; Ochroch, Phil Fisher, Lane Fisher and Wyatt attended the meeting

on behalf of Wyatt. As noted in the prior testimony of Braga and Brinkworth, no one "at that meeting in August of 1998" said "that the relationship was over between Mr. Wyatt and Mr. Edwards."

42. Shortly after the Fox Rothschild meeting, Wyatt called Edwards and asked to meet him for coffee. Edwards agreed and the two men met in the coffee shop of the building where Edwards was living at the time. At the September 18, 2006, trial, Wyatt testified that this coffee shop meeting happened on July 29. However at the first trial on May 2, 2002, Wyatt testified that the coffee shop meeting occurred in August. Then at the second trial on February 3, 2004, Wyatt testified that he could not recall the date of the coffee shop meeting. Whereas at the September 18, 2006 trial, Edwards testified – as he had at the February, 2004 and May, 2002 trials– that this meeting happened in mid-August after the Fox Rothschild meeting. Upon consideration of circumstantial and contemporaneous evidence, as well as the credibility of the witnesses, the Court finds that the coffee shop meeting occurred in mid-August as alleged by Plaintiff.

43. At trial Edwards testified, and Wyatt substantiated that, at the coffee shop meeting, Wyatt and Edwards "discuss[ed] the results of the meeting" at Fox Rothschild. Wyatt said"that what happened at the latter part of July and the first part of August was a lot to do about lawyers posturing, lawyers justifying their fees. [Wyatt] went on to say that as far as he was concerned, nothing had changed, we were going forward with the same plan." At the end of the meeting, Wyatt asked Edwards "to set up a meeting" in "Washington" for him to speak with Braga, and Edwards agreed to do so.

44. Thereafter, on September 1, Edwards, Wyatt and one of Wyatt's counsel (Phil Fisher) traveled to Washington to meet with Braga to discuss strategy. Wyatt testified that he went to Washington for this meeting, rather than requiring Braga to come to Philadelphia, as a "courtesy" to Braga. Wyatt's testimony confirmed that he told Edwards and Braga "many times" at that meeting that a "settlement would need to include Mr. Edwards."

45. Edwards reasonably relied on the statements made by Wyatt at the mid-August coffee shop meeting that "nothing had changed" and during the September 1 meeting in Washington that any "settlement would need to include Mr. Edwards." He testified directly about what he did and did not do in reliance on those statements:

Q: Mr. Edwards did you do anything in reliance on what Mr. Wyatt told you at [the] coffee shop meeting?

A: Mr. Braga, I think I've said it before. It's not what I did do; it's what I didn't do. I didn't seek out any other investor. I didn't speak to any

> other people about this project. I certainly didn't go see Mr. Phillips or make any overtures in that direction. I did absolutely nothing. I felt good that we had a good plan going forward.

(Trial Tr. 65-66, September 18, 2006)

46. Edwards testified that he also relied on Wyatt's statements at the September 1 meeting.

47. Edwards also testified that he did not "seek out any other party or negotiate with anyone else with [regard] to the sale of the assets in the bankruptcy court."

48. In the latter half of October 1998, Wyatt and his counsel entered into serious and continuing settlement negotiations with Phillips without ever advising Edwards or his counsel that a settlement with Phillips was appearing more and more likely to be a result of the negotiations.

49. Wyatt and his counsel never attempted to include Edwards in Wyatt's settlement agreement with Phillips before that agreement was concluded, as required by the Handshake Agreement.

50. On the morning of October 30, Wyatt and Phillips advised the Bankruptcy Court of their settlement and they jointly offered a cash bid of $5.2 million for Edwards's Pilot stock and related assets.

I. CONCLUSIONS OF LAW

The following conclusions are entered:

1. In this diversity case, the Court must apply Pennyslvania's contract law. <u>See</u> <u>Edwards v. Wyatt</u>, 335 F.3d 261, 272 n.6 (3d Cir. 2003) (citing <u>Mellon Bank Corp. v. First Union Real Estate Equity & Mortgage Investments</u>, 951 F.2d 1399, 1405 (3d Cir. 1991)).

2. The elements of breach of contract under Pennsylvania law are: 1) the existence of a contract, including its essential terms; 2) the breach of a duty imposed by the contract; and 3) resultant damages. <u>See</u> <u>Williams v. Nationwide Mut. Ins. Co.</u>, 750 A.2d 881, 884 (Pa. Super. 2000).

3. The Handshake Agreement represented an enforceable promise. Wyatt and Edwards each mutually agreed not to enter into any agreement with Phillips without the participation of the other party. <u>See</u> <u>Channel Home Ctrs. v. Grossman</u>, 795 F.2d 291, 298-99 (3d Cir. 1986) (stating test for enforceable

agreement under Pennsylvania law).

4. "[T]o constitute anticipatory breach [or repudiation of contract] under Pennsylvania law there must be 'an absolute and unequivocal refusal to perform or a distinct and positive statement of an inability to do so.'" Edwards v. Wyatt, 335 F.3d at 272 (quoting 2401 Pennsylvania Ave. Corp. v. Federation of Jewish Agencies, 489 A.2d 733, 737 (1985)).

5. A "subjective belief does not suffice to demonstrate repudiation;" instead, "repudiation must be apparent in an objective sense." Edwards v. Wyatt, 335 F.3d at 273 n.9. "[T]he opinion of retained counsel is [no] less subjective than a party's own belief." Edwards v. Wyatt, No. 04-3325, slip op. at 8 (3d Cir. June 8, 2005).

6. "Mere expression of doubt as to . . . willingness or ability to perform is not enough to constitute a repudiation." Edwards v. Wyatt, 335 F.3d at 273; see also Restatement (Second) of Contracts § 250 cmt. b (1979).[1] "[T]o constitute a repudiation, a party's language must be sufficiently positive to be reasonably interpreted to mean that the party will not or cannot perform." Edwards v. Wyatt, No. 04-3325, slip op. at 7.

7. [T]he recipient of a doubt-creating statement may seek adequate assurances that the other party will perform. Restatement (Second) of Contracts § 250 cmt. b (1979); see also Edwards v. Wyatt, 335 F.3d at 273.

8. Braga's letters of July 30 and July 31, 1998 did not amount to a repudiation of the Handshake Agreement. Their purpose was to seek assurances.

9. The August 10, 1998 meeting at Fox Rothschild, the mid-August coffee shop meeting, and September 1, 1998 meeting in Washington negated repudiation and confirmed continuation of the Handshake Agreement.

10. Wyatt's independent settlement agreement with Phillips, without the

[1] "Pennsylvania courts frequently follow the Restatement of Contracts." Edwards v.Wyatt, 335 F.3d at 272 n.8. See Livingston v. North Belle Vernon Borough, 91 F.3d 515, 539 (3d Cir. 1996), cert. denied, 520 U.S. 1142. "The Pennsylvania Supreme Court has emphasized that Pennsylvania Contract law imposes stricter requirements than does the Restatement for an anticipatory repudiation defense." Edwards v.Wyatt, 335 F.3d at 272 n.8; see 2401 Pennsylvania Ave., 489 A.2d at 737 n.7. "Even so, Pennsylvania courts have relied upon the Restatement with respect to several issues relating to anticipatory repudiation. Edwards v.Wyatt, 335 F.3d at 272 n.8; see Empire Properties, Inc. v. Equireal, Inc., 674 A.2d 297, 305 (Pa. Super. Ct. 1996); Oak Ridge Constr. Co. v. Tolley, 504 A.2d 1343, 1346-47 (Pa. Super. Ct. 1985); Jonnet Development Corp. v. Dietrich Indust, Inc., 463 A.2d 1026, 1031-32 & 1031 n.6 (Pa. Super. Ct. 1983).

participation of Edwards, was a breach of the Handshake Agreement.[2]

11. Edwards is entitled to recover compensatory damages from Wyatt as a consequence of Wyatt's breach of the Handshake Agreement.

12. Under the Wyatt-Phillips settlement agreement, Wyatt received economic benefits worth millions of dollars more than the economic benefits that Edwards received as a result of the sale of his bankruptcy estate assets to Wyatt and Phillips for $5.2 million.

13. The presumptively fair and reasonable distribution of those benefits is pro rata, according to Wyatt and Edwards's respective ownership shares (Wyatt 45%; Edwards 33 1/3 %) in Pilot prior to the breach.

14. As part of the damages assessment, this Court has considered specific benefits Wyatt enjoyed as a result of settling the bankruptcy estate with Phillips, namely: a) 50% interest in Pilot valued at $9,500,000; b) payment of his legal fees valued at $700,000; c) a four-year employment contract valued at $1,200,0000; d) 50% interest in the Edwards Partnership valued at $1,500,000.

15. Under the foregoing damages analysis, Edwards is entitled to $4,290,000 in compensatory damages. This amount reflects Edwards's pro rata share (33 1/3 %) of the total benefits Wyatt enjoyed and Edwards lost as a result of Wyatt's breach of the Handshake Agreement.

16. No prejudgement interest will be awarded.

An appropriate order follows.

[2] In its Trial Memorandum, Plaintiff asserts an alternative cause of action in promissory estoppel. However, since this Court finds that there is an enforceable contract, and enforceable consideration exists, we will not address Plaintiff's promissory estoppel claim.